

REMARKS

Claims 14 and 17-20 were previously rejected and remain pending. Claims 21-29 are new. Reconsideration and allowance are respectfully requested.

Claim Rejections – 35 USC § 103

Claims 14 and 17-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Walton (U.S. Patent No. 5,621,723) in view of Proctor (U.S. Patent No. 6,222,832) and further in view of Raith (U.S. Patent No. 5,930,706). This rejection is respectfully traversed and reconsideration is requested.

Claim 14 requires the power level of at least one of a plurality of subchannel signals within a reverse link signal to be adjusted independently, based on a comparison of the received frame error rate of each of the subchannel signals with a threshold. None of the applied references disclose such a feature, either alone or in combination.

As recognized by the Examiner, Walton does not disclose a plurality of subchannel signals that are part of a reverse link signal, or comparing the frame error rate of any part of a reverse link signal with a threshold.

The Examiner relies upon Proctor for its disclosure of a plurality of subchannel signals. However, Proctor may not be cited against claim 14 because its earliest possible effective filing date (December 17, 1997) is after the effective filing date of claim 14 (February 13, 1997).¹ Further, there is nothing in either Walton or Proctor that suggests independently adjusting the power levels of at least one of a plurality of subchannel signals within a reverse link signal. As also recognized by the Examiner, Walton and Proctor, even in combination, also fail to disclose comparing the frame error rate with a threshold.

The Examiner suggests that column 8, lines 28-49 of Raith discloses comparing a frame error rate with a threshold. Applicant respectfully disagrees. Raith discloses adjusting a threshold

¹ The subject application is a continuation of U.S. Patent Application Serial No. 09/353,895, filed July 15, 1999, which was a divisional of U.S. Patent Application Serial No. 08/800,734, filed February 13, 1997. The specifications of all three applications, except for the claims, are substantially the same.

based on a frame error rate, not comparing a threshold to a frame error rate. (“[T]he decision threshold . . . may have to be continuously adjusted . . . in view of . . . frame error rate . . .”) These are fundamentally different operations. Thus, the combination of Walton, Proctor, and Raith still fail to disclose comparing a frame error rate with a threshold. They also fail to disclose, even in combination, independently adjusting the power levels of at least one of a plurality of subchannel signals within a reverse link signal, let alone doing so based on a comparison of each of their frame error rates with a threshold, all as required by claim 14.

Claims 17 – 20 are dependent upon claim 14 and thus are also not unpatentable in view of Walton, Proctor, and Raith for at least the reasons stated above.

Request for Withdrawal of Final Rejection

Applicant respectfully requests that the final rejection be withdrawn. M.P.E.P. 706.07(a) provides that a rejection shall not be made final where “the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)” In the present case, the Examiner applied Raith for the first time against the claims in the last office action and acknowledged that this was a new ground of rejection. Although applicant had previously amended the claims, these amendments were minor and did not necessitate this new ground of rejection. To be sure, the Examiner does not contend otherwise.

New Claims 21-31

New claims 21-29 are similar to previously-pending claims 14 and 17-20, except that that are directed to apparatus that perform the methods of these previously-pending claims. Thus, new claims 21-29 do not inject any new matter² and are patentable in view of Walton, Proctor, and Raith for at least the reasons stated above.

REQUEST FOR ALLOWANCE

² New claims 21-29 are supported, for example, by Figures 2 and 3 in the original application, along with the textual information on page 6, lines 20-27 and page 7, line 26 – page 9, line 2.

In view of the foregoing, Applicant respectfully submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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